

***IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA***

<i>WINSTON CHU, M.D. and</i>	:	<i>CIVIL ACTION</i>
<i>AESTHETIC & RECONSTRUCTIVE SURGERY, PC</i>	:	<i>NO. 1:06-cv-00091-MBC</i>
<i>Plaintiffs,</i>	:	<i>(Electronically Filed)</i>
<i>v.</i>	:	
<i>DISABILITY REINSURANCE MANAGEMENT</i>	:	
<i>SERVICES, INC., a/k/a DISABILITY RMS,</i>	:	
<i>ROBERT KELLER, M.D.,</i>	:	
<i>THE UNITED STATES LIFE INSURANCE</i>	:	
<i>COMPANY IN THE CITY OF NEW YORK,</i>	:	
<i>AMERICAN INTERNATIONAL GROUP, INC., a/k/a</i>	:	
<i>AIG</i>	:	
<i>AMA INSURANCE AGENCY, INC., a subsidiary of</i>	:	
<i>the American Medical Association, and</i>	:	
<i>AMERICAN MEDICAL ASSOCIATION,</i>	:	
<i>Defendants.</i>	:	

MOTION FOR CLARIFICATION OF AUGUST 29, 2006 OPINION AND ORDER

Defendants, Disability Reinsurance Management Services, Inc. (“DRMS”) and Dr. Robert Keller (“Keller”), by and through their attorneys, White and Williams LLP, bring this Motion pursuant to Fed. R. Civ. Proc. 60 to clarify whether the Court intended to dismiss certain counts of the Complaint in its August 29, 2006 Opinion and Order (the “Order”). This motion does not seek reconsideration of the Court’s interpretation of the facts or the law. Rather, DRMS and Keller believe that additional counts of the Complaint should be dismissed and/or were intended to be dismissed based upon the Court’s reasoning.

COUNT XLV (45)
(“Libel” – A&RS v. DRMS)

According to the Order, Count XLV (45) (“Libel” – A&RS v. DRMS) was not dismissed.¹ DRMS and Keller request clarification of whether this count should be dismissed in light of the Court’s conclusion on Page 5 of the Order that “A&RS has failed to state a defamation, libel or slander claim against these Defendants upon which relief can be granted.”

With the exception of Count XLV(45), all of the libel, slander and defamation counts by A&RS were dismissed. For example, the Court dismissed the “Libel” claim asserted by A&RS against Keller (Count XLVI (46)). Additionally, the Court dismissed both of the “Slander” claims asserted by A&RS (Counts XXXIX (39) and XL (40)) and both of the “Defamation” claims asserted by A&RS (Counts LI (51) and LII (52)).

Given the Court’s reasoning and its dismissal of the other libel, slander and defamation causes of action asserted by A&RS, it appears that Count XLV(45) should have been dismissed and/or was intended to be dismissed. DRMS and Keller therefore respectfully request clarification on this point.

COUNT LVIII (58)
“Bad Faith – Breach Of Contract – Declination Of Benefits”
(A&RS v. Keller)

According to the Order, Count LVIII (58) (“Bad Faith – Breach of Contract – Declination of Benefits” - A&RS v. Keller) was not dismissed.² DRMS and Keller request clarification of whether this count should be dismissed in light of the Court’s conclusion on Page 18 of the Order that “It is not premature, however, to dismiss the §8371 claim against Dr. Keller,

¹ DRMS and Keller sought dismissal of Count XLV (45) in their Brief in Support of Motion to Dismiss, pp. 18-20.

² DRMS and Keller sought dismissal of Count LVIII (58) in their Brief in Support of Motion to Dismiss, pp. 20-21.

whom Plaintiffs do not allege was a decision-maker with respect to Dr. Chu's insurance claims.”

Although Dr. Chu's §8371 claim against Dr. Keller was dismissed (Count XXIV (24)), the §8371 claim by Chu's business against Dr. Keller (Count LVIII (58)) was not dismissed. Given the Court's reasoning and its dismissal of the other §8371 claim against Dr. Keller, it appears that Count LVIII (58) should have been dismissed and/or was intended to be dismissed. DRMS and Keller therefore respectfully request clarification on this point.

COUNTS LXIII (63) AND LXIV (64)
“Punitive Damages”
(A&RS v. DRMS)
(A&RS v. Keller)

According to the Order, Counts LXIII (63) (“Punitive Damages” – A&RS v. DRMS) and LXIV (64) (“Punitive Damages” – A&RS v. Keller) were not dismissed.³ DRMS and Keller request clarification of whether these counts should be dismissed in light of the Court's conclusion on Page 19 of the Order that “While Plaintiffs acknowledge, as they must, that their punitive damages claims cannot constitute separate and distinct causes of action, the reality is that their punitive damages requests are pled as separate and distinct causes of action against these defendants.” Although Dr. Chu's “Punitive Damages” causes of action were dismissed (Counts XXIX (29) and XXX (30)), the “Punitive Damages” claims by Chu's business against DRMS and Dr. Keller (Counts LXIII (63) and LXIV (64)) were not dismissed. Given the Court's reasoning and its dismissal of the other “Punitive Damages” claims, it appears that Counts LXIII (63) and LXIV (64) should have been dismissed and/or were intended to be dismissed. DRMS and Keller therefore respectfully request clarification on this point.

³ DRMS and Keller sought dismissal of Counts LXIII (63) and LXIV (64) in their Brief in Support of Motion to Dismiss, p. 21.

CONCLUSION

For the reasons set forth above, DRMS and Dr. Keller respectfully request that this Court clarify its August 29, 2006 Opinion and Order and dismiss Counts XLV (45), LVIII (58), LXIII (63) and LXIV (64).

Respectfully submitted,

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DATED: September 11, 2006

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<i>WINSTON CHU, M.D. and AESTHETIC & RECONSTRUCTIVE SURGERY, PC</i>	: CIVIL ACTION
	: NO. 1:06-cv-00091-MBC
<i>Plaintiffs,</i>	:
	(Electronically Filed)
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	:
<i>DISABILITY REINSURANCE MANAGEMENT SERVICES, INC., a/k/a DISABILITY RMS,</i>	:
<i>ROBERT KELLER, M.D.,</i>	:
<i>THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK,</i>	:
<i>AMERICAN INTERNATIONAL GROUP, INC., a/k/a AIG</i>	:
<i>AMA INSURANCE AGENCY, INC., a subsidiary of the American Medical Association, and</i>	:
<i>AMERICAN MEDICAL ASSOCIATION,</i>	:
	:
<i>Defendants.</i>	:

ORDER ON MOTION FOR CLARIFICATION

Pending before the Court is the Motion For Clarification by Defendants Disability Reinsurance Management Services, Inc. and Dr. Robert Keller. Having reviewed the submissions of the parties and for good cause shown:

IT IS on this _____ day of _____, 2006 hereby
ORDERED that the Motion for Clarification is granted and Counts XLV (45), LVIII (58), LXIII (63) and LXIV (64) of the Complaint are dismissed.

Maurice B. Cohill, Jr.
Senior District Court Judge

CERTIFICATE OF SERVICE

I, Ira S. Bergman, hereby certify that I have caused a true and correct copy of the foregoing Motion For Clarification of August 29, 2006 Opinion and Order to be served via electronic means through the Court's transmission facilities pursuant to Local Rule 5.5 on September 11, 2006, upon the following:

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